

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MELANIE A. KLINGENSMITH,)	
individually and on behalf of all others)	Civil Action No.
similarly situated.)	
)	CLASS ACTION
Plaintiff,)	
)	<u>JURY TRIAL DEMANDED</u>
v.)	
)	Electronically Filed
OILILY RETAIL USA d/b/a OILILY,)	
and DOES 1 through 10, inclusive,)	
)	
Defendants.)	
)	

CLASS ACTION COMPLAINT

Comes now Melanie A. Klingensmith, ("Plaintiff") on behalf of herself and all others similarly situated and alleges as follows:

INTRODUCTION

1. In 2003, Congress passed and the President signed, the Fair and Accurate Credit Transaction Act ("FACTA") to assist in the prevention of identity theft and credit and debit card fraud. In the statement provided by the President during the signing of the bill, the President declared that:

This bill also confronts the problem of identity theft. A growing number of Americans are victimized by criminals who assume their identities and cause havoc in their financial affairs. With this legislation, the Federal Government is protecting our citizens by taking the offensive against identity theft.

2. A main provision of FACTA (codified as 15 U.S.C. §1681c(g) of the Fair Credit Reporting Act) provides that:

No person that accepts credit cards or debit cards for the transaction of business shall print more than the last five digits of the card number or the expiration date upon any receipt provided to the cardholder at the point of sale or transaction.

3. The law gave merchants who accept credit cards and/or debit cards up to three years to comply with its requirements, requiring full compliance with its provisions no later than December 4, 2006. Although Defendants (defined below) had up to three years to comply, Defendants have willfully violated this law and failed to protect Plaintiff and others similarly situated against identity theft and credit card and debit card fraud by continuing to print more than the last five digits of the card number and/or the expiration date on receipts provided to debit card and credit card cardholders transacting business with Defendants.

4. Plaintiff, on behalf of herself and all others similarly situated, brings this action against Defendants based on Defendants' violation of 15 U.S.C. §§1681 *et seq.*

5. Plaintiff seeks, on behalf of herself and the class, statutory damages, punitive damages, costs and attorneys fees, all of which are expressly made available by statute, 15 U.S.C. §§1681 *et seq.*

JURISDICTION AND VENUE

6. This Court has federal question jurisdiction pursuant to 28 U.S.C. §1331 and 15 U.S.C. §1681p.

7. Plaintiff's claims asserted herein arose in this judicial district and Defendants do business in this judicial district.

8. Venue in this judicial district is proper under 28 U.S.C. §1391(b) and (c) and 1400(a) in that this is the judicial district in which a substantial part of the acts and omissions giving rise to the claims occurred.

PARTIES

9. Plaintiff, Melanie A. Klingensmith, is and at all times relevant hereto was a resident of the Commonwealth of Pennsylvania, County of Lawrence.

10. Defendant Oilily Retail USA d/b/a Oilily is a company headquartered at 103 Forest Avenue, River Forest, Illinois 60305. "Defendant" means Oilily Retail USA d/b/a Oilily and defendants Does 1 through 10. Defendant is a "person that accepts credit cards or debit cards for the transaction of business" within the meaning of FACTA.

11. Plaintiff is unaware of the true names of defendants Does 1 through 10. Said defendants are sued by said fictitious names, and the pleadings will be amended as necessary to obtain relief against defendants Does 1 through 10 when the true names are ascertained, or as permitted by law or by the Court.

12. Plaintiff is informed and believes and thereon alleges that all relevant times each defendant was the franchisor, franchisee, principal, agent, partner, joint venturer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of some or all of the other defendants, and was engaged with some or all of the other defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other defendants so as to be liable for their conduct with respect to the matters alleged below. Plaintiff is informed and believes and thereon alleges that each defendant acted pursuant to and within the scope of the relationships alleged above, that each defendant knew or should have known about, and authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other defendants.

**INDUSTRY KNOWLEDGE REGARDING THE
TRUNCATION OF EXPIRATION DATES**

13. In early 2003, the payment card industry and Congress announced that they were working together to combat identity theft. A critical part of this joint effort was the truncation of personal data from credit and debit card receipts presented to consumers at the point of sale.

14. On March 6, 2003, Visa CEO Carl Pascarella held a joint press conference with

Senators Judd Gregg, Jon Corzine, Patrick Leahy and Dianne Feinstein to announce Visa USA's new account truncation program to protect consumers from identity theft. At the press conference, Mr. Pascarella stated:

"Today, I am proud to announce an additional measure to combat identity theft and protect consumers. Our new receipt truncation policy will soon limit cardholder information on receipts to the last four digits of their accounts. ***The card's expiration date will be eliminated from receipts altogether***

"The first phase of this new policy goes into effect July 1, 2003 for all new terminals. I would like to add, however, that even before this policy goes into effect, many merchants have already voluntarily begun truncating receipts, thanks to the groundwork that we began together several years ago.

* * * *

"Visa USA is pleased to be working with Senator Feinstein, and the other senators here today in the fight to protect consumers from identity theft. After all, we share the same goals."

On July 9, 2003, L. Richard Fischer, presented a written statement to the United States House of Representatives Committee on Financial Services on behalf of Visa USA, Inc., supporting the truncation requirements of what ultimately became FACTA. Therein, Mr. Fischer stated:

"Although Visa generally believes that the details of preventing identity theft should be left to financial institutions that are best suited to address ever evolving fraud techniques, Title II could provide important benefits to consumers and financial institutions alike by establishing workable identity theft provisions and ensuring that these provisions benefit from national uniformity. For example, Section 203 of Title II would prohibit any merchant or other entity that accepts credit and debit cards from printing more than the last four digits of the card account number ***or the expiration date*** upon receipts provided to cardholders at the point of sale"

15. Visa USA's agreements with the American merchants which accept Visa brand credit or debit cards are defined in part in a manual entitled Rules for Visa Merchants, Card Acceptance and Chargeback Management Guidelines ("Visa Merchant Rules"). The Visa

Merchant Rules Manual includes a description of Visa's truncation requirements. For example, the 2006 edition of the Manual states:

"Visa requires that all new electronic POS terminals provide account number truncation on transaction receipts. This means that only the last four digits of an account number should be printed on the customer's copy of the receipt.

After July 1, 2006, *the expiration date should not appear at all*. Existing POS terminals must comply with these requirements by July 1, 2006 "

16. The truncation standards set forth in the Visa Merchant Rules, which are part of the contract between Visa and the merchants which accept its debit and/or credit cards, served as the basis for what ultimately became the truncation requirements of FACTA.

17. The Office of Thrift Supervision, United States Department of Treasury ("OTS"), is responsible, *inter alia*, for monitoring financial institution compliance with FACTA. Toward this end, the OTS publishes an Examination Handbook ("Handbook") which assists OTS field personnel when they perform an examination, or compliance audit, of a given financial institution. The February 2006 Edition of the Handbook states, in relevant part:

Truncation of Credit and Debit Card Account Numbers

Ensure that electronically generated receipts from ATM and POS terminals or other machines do not contain more than the last five digits of the card number *and do not contain the expiration dates*.

18. FACTA's requirement that merchants truncate credit and debit card expiration dates was phased in over a three year period. During the three year phase-in period, there was extensive publicity regarding the law's requirements.

19. Many restaurant and retail trade associations apprised their merchant members that FACTA requires truncation of the entire expiration date and all but the last five digits of the cardholder account number.

20. In May, 2007 the Federal Trade Commission issued a business alert entitled "Slip Showing? Federal Law Requires All Businesses to Truncate Credit Card Information on Receipts." That alert stated in relevant part:

"According to the federal Fair and Accurate Credit Transaction Act (FACTA), the electronically printed credit and debit card receipts you give your customers must shorten – or truncate – the account information. You may include no more than the last five digits of the card number, and you must delete the card's expiration date."

**DEFENDANTS' KNOWLEDGE OF FACTA'S
TRUNCATION REQUIREMENTS**

21. Defendant had actual knowledge of Visa's truncation requirements, specifically including the requirement that credit and debit card expiration dates be truncated on receipts presented to consumers at the point of sale. Defendant had a contractual obligation to adhere to these truncation requirements.

22. Defendant had actual knowledge of FACTA's truncation requirements, specifically including the requirement that credit and debit card expiration dates be truncated on receipts presented to consumers at the point of sale and was provided with notice of these obligations by trade associations and others.

THE IMPORTANCE OF TRUNCATING EXPIRATION DATES

23. Truncation standards, including the standards reflected in the Visa Merchant Rules and in FACTA, permit the publication of the last four or five digits of customer account numbers on the receipt presented to customers at the point of sale. The publication of this minimal amount of account information is necessary to facilitate merchant account reconciliation, processing of returns, etc. In isolation, the publication of *only* the last four or five digits of a customer account number significantly limits the extent to which a potential identity

thief can effectively use customer receipts disseminated at the point of sale to facilitate identity theft.

24. However, the publication of expiration dates on customer receipts disseminated at the point of sale, *in addition to* the last four or five digits of the customer account number, exponentially increases the possibility of identity theft, which is the obvious reason that Visa, and then Congress, requires the truncation of expiration dates.

25. Contrary to popular perception, credit and debit card account numbers are not randomly generated. Instead, account numbers reflect an internal coding scheme set forth by the International Organization for Standardization ("ISO") 7812, which defines the content in the cards' magnetic strips. Consistent with this standard, every credit card number consists of the following: (a) a single digit Major Industry Identifier ("MII"); (b) an issuer identification number ("IIN"); (c) an account number; and, (d) a check digit.

26. The MII identifies the industry of the issuer of the card.

27. The IIN consists of the first six digits of the card number and identifies the specific issuer of the card.

28. The account number consists of the seventh through next to last digit, and must be a maximum of 12 digits.

29. The last digit is a "check digit" that is not randomly assigned, but instead is calculated by a defined algorithm. Therefore, the "check digit" is derivative of the other numbers in the credit card number.

30. Astute identity thieves are familiar with this coding paradigm and can use sophisticated mathematical modeling to decipher account numbers.

31. To the extent that an identity thief is able to decipher a credit or debit card user's

account number, the importance of truncating expiration dates becomes manifest. That is, unlike the account number on the credit or debit card, the expiration date cannot be deciphered through sophisticated mathematical modeling. Therefore, the expiration date is an important security check that corroborates that a person attempting to use a given account number is actually the authorized user of the card.

32. The expiration dates are also used to confirm that a person making a purchase over the phone or on the internet actually has the card in their possession.

33. Banks and credit card associations (i.e. Visa, MasterCard, American Express, etc.) are keenly aware of the importance of truncating expiration dates.

34. In addition, a would be identity thief who steals a receipt containing the last four or five digits of a credit card account number *and* an expiration date can use that data in an attempt to dupe the cardholder, or other potential information sources, into disclosing additional confidential financial information relating to the cardholder. The more information that is disclosed on the receipt, the easier it is to pilfer additional confidential financial information.

35. The costs of truncating credit and/or expiration dates and account numbers is *de minimis*.

CLASS ALLEGATIONS

36. Plaintiff brings this class action on behalf of herself and all others similarly situated pursuant to Rules 23(a) and 23(b) of the Federal Rules of Civil Procedure.

37. Plaintiff seeks to represent a class persons to be defined as follows:

With respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that was in use prior to January 1, 2005: all persons to whom Defendants provided an

electronically printed receipt at the point of sale or transaction, in a transaction occurring after December 4, 2006, on which Defendants printed 1) more than the last five digits of the person credit card or debit card number, and/or, 2) the expiration date of the person's credit card number; and/or

With respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that was first put into use on or after January 1, 2005: all persons to whom Defendants provided an electronically printed receipt at the point of sale or transaction, in a transaction occurring after such machine was put into use, on which Defendants printed 1) more than the last five digits of the person credit card or debit card number, and/or, 2) the expiration date of the person's credit card number.

38. Numerosity: The class described above is so numerous that joinder of all individual members in one action would be impracticable. The disposition of the individual claims of the respective class members through this class action will benefit both the parties and this Court.

39. Plaintiff is informed and believes, and thereon alleges, that there are at minimum, thousands of members of the class described above.

40. The exact size of the class and the identities of the individual members thereof are ascertainable through Defendants' records, including but not limited to Defendants' sales and transaction records.

41. Members of the class may be notified of the pendency of this action by techniques and forms commonly used in class actions, such as by published notice, e-mail notice, website

notices, first class mail, or combinations thereof, or by other methods suitable to this class and deemed necessary and/or appropriate by this Court.

42. Typicality: Plaintiff's claims are typical of the claims of the members of the class. The claims of the Plaintiff and members of the class are based on the same legal theories and arise from the same unlawful and willful conduct.

43. Plaintiff and members of the class were each customers of Defendants, each having made a purchase or transacted other business with Defendants at an applicable time using a credit card and/or debit card. At the point of such sale or transaction with Plaintiff and members of the class, Defendants provided to Plaintiff and each member of the class a receipt in violation of 15 U.S.C. §1681c(g).

44. Common Questions of Fact and Law: There is a well-defined community of interest and common questions of fact and law affecting members of the class.

45. The questions of fact and law common to the class predominate over questions which may affect individual members and include the following:

- a. Whether Defendants' conduct of providing Plaintiff and the members of the class with a sales or transaction receipt whereon Defendants printed more than the last five digits of the credit card or debit card and/or the expiration date of the credit card or debit card violated the FACTA, 15 U.S.C. §§1681 et seq.;
- b. Whether Defendants' conduct was willful;
- c. Whether Plaintiff and members of the class are entitled to statutory damages, punitive damages, costs and/or attorneys' fees for Defendants' acts and conduct;

46. Adequacy of Representation: Plaintiff is an adequate representative of the class because her interests do not conflict with the interests of the members of the class. Plaintiff will fairly, adequately, and vigorously represent and protect the interests of the members of the class and has no interests antagonistic to the members of the class. Plaintiff has retained counsel who are competent and experienced in the prosecution of class action litigation.

47. Superiority: A class action is superior to other available means for the fair and efficient adjudication of the claims of the class. While the aggregate damages which may be awarded to the members of the class are likely to be substantial, the damages suffered by the individual members of the class are relatively small. As a result, the expense and burden of individual litigation makes it economically infeasible and procedurally impracticable for each member of the class to individually seek redress for the wrongs done to them. Plaintiff does not know of any other litigation concerning this controversy already commenced by or against any member of the class. The likelihood of the individual members of the class prosecuting separate claims is remote. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments, and would increase the delay and expense to all parties and the court system resulting from multiple trials of the same factual issues. In contrast, the conduct of this matter as a class action presents fewer management difficulties, conserves the resources of the parties and the court system, and would protect the rights of each member of the class. Plaintiff knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action.

48. Disavowal of Unconstitutional Damages. To the extent that any award of class-based statutory damages against Defendants might be adjudicated as violating Defendants' Due Process Rights under the United States Constitution, Plaintiff, on behalf of the putative class she

is seeking to represent, expressly requests damages only to the fullest extent allowed under the Constitution of the United States.

FIRST CAUSE OF ACTION

For Violation of 15 U.S.C. §§1681 *et seq.*

(On Behalf of Plaintiff and the Members of the Class)

49. Plaintiff hereby incorporates by reference the allegations contained in the above paragraphs of this Complaint as if fully set forth herein.

50. Plaintiff asserts this claim on behalf of herself and the class against Defendants.

51. Title 15 U.S.C. §1681c(g)(1) provides that:

...no person that accepts credit cards or debit cards for the transaction of business shall print more than the last five digits of the card number or the expiration date upon any receipt provided to the cardholder at the point of sale of transaction.

52. With respect to machines that were first put into use after January 1, 2005, 15 U.S.C. §1681c(g)(3)(B) required immediate compliance with the provisions of 15 U.S.C. §1681c(g)(1).

53. With respect to machines that were in use before January 1, 2005, 15 U.S.C. §1681c(g)(3)(B) required compliance with the provisions of 15 U.S.C. §1681c(g)(1) on or after December 4, 2006.

54. Defendants transact business in the United States and accept credit cards and/or debit cards in the course of transacting business with persons such as Plaintiff and the members of the class. In transacting such business, Defendants use cash registers and/or other machines or devices that electronically print receipts for credit card and/or debit card transactions.

55. On September 1, 2007, after the effective date of the statute, Defendant, at its

location at 160 North Gulph Road, King of Prussia, Pennsylvania 19406, provided Plaintiff with an electronically printed receipt on which Defendant printed the expiration date of Plaintiff's credit or debit card.

56. Defendants, at the point of a sale or transaction with members of the class, provided, either: a) through use of a machine that was first put into use on or after January 1, 2005, at any time after such date; or b) through any machine at any time after December 4, 2006, each member of the class with one or more electronically printed receipts on each of which Defendants printed, for each respective class member, more than the last five digits of such member's credit card or debit card number and/or printed the expiration date of such member's credit or debit card.

57. As set forth above, FACTA was enacted in 2003 and gave merchants who accept credit card and/or debit cards up to three years to comply with its requirements, requiring compliance for all machines no later than December 4, 2006.

58. Defendants knew of, or should have known of, and were informed about the law, including specifically FACTA's requirements concerning the truncation of credit and debit card numbers and prohibition on printing of expiration dates.

59. Despite knowing and being repeatedly informed about FACTA and the importance of truncating credit card and debit card numbers and preventing the printing of expiration dates on receipts, and despite having had up to more than three years to comply with FACTA's requirements, Defendants willfully violated and continue to violate FACTA's requirements by, *inter alia*, printing more than five digits of the card number and/or the expiration date upon the receipts provided to members of the class - persons with whom Defendants transact business.

60. Most of Defendants' business peers and competitors readily brought their credit card and debit card receipt printing process into compliance with FACTA by, for example, programming their card machines and devices to prevent them from printing more than the last five digits of the card number and/or the expiration date upon the receipts provided to the cardholders. Defendants could have readily done the same.

61. In contrast, Defendants willfully disregarded FACTA's requirements and continue to use cash registers or other machines or devices that print receipts in violation of FACTA.

62. Defendants willfully violated FACTA in conscious disregard of the rights of Plaintiff and the members of the class thereby exposing Plaintiff and the members of the class to an increased risk of identity theft and credit and/or debit card fraud.

63. As a result of Defendants' willful violations of FACTA, Defendants are liable to Plaintiff and each member of the class in the statutory damage amount of "not less than \$100 and not more than \$1000" for each violation. 15 U.S.C. §1681n(a)(1)(A).

64. As a result of Defendants' willful violations of FACTA, Plaintiff and the members of the class are entitled to recover costs of suit and their reasonable attorneys' fees. 15 U.S.C. §1681n(a)(3).

65. As a result of Defendants' willful violations of FACTA, Plaintiff and the members of the class are entitled to recover punitive damages. 15 U.S.C. §1681n(a)(2).

PRAYER FOR RELIEF

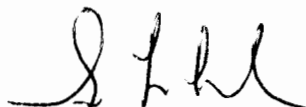
WHEREFORE, Plaintiff, on behalf of herself and the members of the class, prays for:

- a. An order certifying the class and appointing Plaintiff as the representative of the class, and appointing counsel for Plaintiff as counsel for the class;

- b. An award to Plaintiff and the members of the class of statutory damages pursuant to 15 U.S.C. §1681n(a)(1)(A) for Defendants' willful violations (up to but not exceeding the fullest extent allowed under the Constitution of the United States);
- c. An award to Plaintiff and the members of the class of punitive damages pursuant to 15 U.S.C. §1681n(a)(2)(up to but not exceeding the fullest extent allowed under the Constitution of the United States);
- d. Payment of costs of suit herein incurred pursuant to, *inter alia*, 15 U.S.C. §1681n(a)(3);
- e. Payment of reasonable attorneys' fees pursuant to, *inter alia*, 15 U.S.C. §1681n(a)(3);
- f. For other and further relief as the Court may deem proper.

Dated: October 15, 2007

Respectfully Submitted,



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(724) 656-1556(f)

CIVIL COVER SHEET

APPENDIX H

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS Melanie Klingensmith, individually and on behalf of all others similarly situated (b) County of Residence of First Listed Plaintiff <u>Lawrence</u> (EXCEPT IN U.S. PLAINTIFF CASES) (c) Attorney's (Firm Name, Address, and Telephone Number) Gary F. Lynch, Carlson Lynch Ltd, 36 N. Jefferson Street, PO Box 7635, New Castle, PA 16107 724-656-1555	DEFENDANTS Oilily Retail USA, d/b/a Oilily.. and DOES 1 through 10, inclusive County of Residence of First Listed Defendant _____ (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED Attorneys (If Known) _____
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II. BASIS OF JURISDICTION (Place an "X" in One Box Only) <input checked="" type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) <table style="width:100%;"> <tr> <th style="text-align: left;">PTF</th> <th style="text-align: left;">DEF</th> <th style="text-align: left;">PTF</th> <th style="text-align: left;">DEF</th> </tr> <tr> <td>Citizen of This State <input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State <input type="checkbox"/> 1</td> <td>Citizen of Another State <input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State <input type="checkbox"/> 2</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country <input type="checkbox"/> 3</td> <td>Foreign Nation <input type="checkbox"/> 3</td> <td></td> <td></td> </tr> </table>	PTF	DEF	PTF	DEF	Citizen of This State <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State <input type="checkbox"/> 1	Citizen of Another State <input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State <input type="checkbox"/> 2	Citizen or Subject of a Foreign Country <input type="checkbox"/> 3	Foreign Nation <input type="checkbox"/> 3		
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IV. NATURE OF SUIT (Place an "X" in One Box Only)																								
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Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	TORTS <table style="width:100%;"> <tr> <th style="text-align: left;">PERSONAL INJURY</th> <th style="text-align: left;">PERSONAL INJURY</th> </tr> <tr> <td><input type="checkbox"/> 310 Airplane</td> <td><input type="checkbox"/> 362 Personal Injury - Med Malpractice</td> </tr> <tr> <td><input type="checkbox"/> 315 Airplane Product Liability</td> <td><input type="checkbox"/> 365 Personal Injury - Product Liability</td> </tr> <tr> <td><input type="checkbox"/> 320 Assault, Libel & Slander</td> <td><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</td> </tr> <tr> <td><input type="checkbox"/> 330 Federal Employers' Liability</td> <td>PERSONAL PROPERTY</td> </tr> <tr> <td><input type="checkbox"/> 340 Marine</td> <td><input type="checkbox"/> 370 Other Fraud</td> </tr> <tr> <td><input type="checkbox"/> 345 Marine Product Liability</td> <td><input type="checkbox"/> 371 Truth in Lending</td> </tr> <tr> <td><input type="checkbox"/> 350 Motor Vehicle</td> <td><input type="checkbox"/> 380 Other Personal Property Damage</td> </tr> <tr> <td><input type="checkbox"/> 355 Motor Vehicle Product Liability</td> <td><input type="checkbox"/> 385 Property Damage Product Liability</td> </tr> <tr> <td><input type="checkbox"/> 360 Other Personal Injury</td> <td></td> </tr> </table>	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med Malpractice	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 330 Federal Employers' Liability	PERSONAL PROPERTY	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 360 Other Personal Injury		FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor Mgmt. 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<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage																							
<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability																							
<input type="checkbox"/> 360 Other Personal Injury																								
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer w Disabilities Employment <input type="checkbox"/> 446 Amer w Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition																						

V. ORIGIN (Place an "X" in One Box Only)						
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <u>15 U.S.C. §1681e(g)</u> Brief description of cause: Willful failure to truncate credit card information in violation of the Fair and Accurate Transaction Act
----------------------------	--

VII. REQUESTED IN COMPLAINT:	<input checked="" type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$	CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
-------------------------------------	---	------------------	---

VIII. RELATED CASE(S) IF ANY	(See instructions) JUDGE: _____ DOCKET NUMBER: _____
-------------------------------------	--

DATE	SIGNATURE OF ATTORNEY OF RECORD
October 15, 2007	/s/ Gary F. Lynch

FOR OFFICE USE ONLY			
RECEIPT #	AMOUNT	APPLYING IFP	JUDGE: _____ MAG JUDGE: _____

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.Address of Plaintiff: Lawrence County, PennsylvaniaAddress of Defendant: 103 Forest Avenue, River Forest, IL 60305Place of Accident, Incident or Transaction: Philadelphia, PA

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☒ No ☐

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?

Yes ☐ No ☒

2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?

Yes ☐ No ☒

3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?

Yes ☐ No ☒CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☒ All other Federal Question Cases
(Please specify)

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases
(Please specify)

ARBITRATION CERTIFICATION

(Check appropriate Category)

I, Gary F. Lynch, counsel of record do hereby certify:

☒ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

☐ Relief other than monetary damages is sought.

DATE: October 15, 2007Gary F. Lynch56887

Attorney-at-Law

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: October 15, 2007Gary F. Lynch56887

Attorney-at-Law

Attorney I.D.#

CIV. 609 (4/03)

APPENDIX I

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

Melanie A. Klingensmith, et al	:	CIVIL ACTION
	:	
v.	:	
	:	
Oilily Retail USA	:	NO.
d/b/a/ Oilily, et al	:	

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (Sec § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. §2241 through §2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) (X)
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ()

October, 15, 2007

Date

Gary F. Lynch

Attorney-at-law

Plaintiff

Attorney for

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Telephone

(724) 656-1556

FAX Number

glynch@carlsonlynch.com

E-Mail Address

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

07-4321-File

In re Oilily FACTA Litigation

MDL No. _____

Copy Re- **MOTION TO CENTRALIZE FOR COORDINATED OR CONSOLIDATED
PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C. §1407**

1. For the reasons set forth in the accompanying memorandum, plaintiff Melanie A. Klingensmith respectfully moves the Panel to transfer the action styled, *Klingensmith v. Oilily Retail USA d/b/a Oilily*, No. 2:07-04321 (E.D. Pa.) (the "Pennsylvania Action"), to the Northern District of California for coordination or consolidation with *McCoy v. Oilily B.V.*, No. 3:07-04780 (N.D. Ca.) (the "California Action"). See attached Schedule of Actions pursuant to 28 U.S.C. §1407.

2. Both pending actions involve the same defendant (Oilily) and contain a cause of action for violation of the Fair and Accurate Credit Transaction Act, 15 U.S.C. §1681 et seq. ("FACTA").

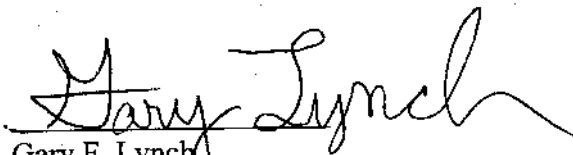
3. Each lawsuit is premised on allegations that defendant violated federal law by printing more than the last five digits of the card number and/or the expiration date of receipts provided to credit card and debit card cardholders transacting business with defendant.

4. Given the similarities of the allegations, these two cases satisfy the statutory requirements for transfer and coordination or consolidation under 28 U.S.C. §1407.

5. For the reasons set forth above and in the accompanying memorandum, the Panel should transfer the Pennsylvania Action for coordination or consolidation with the California Action before United States District Court for the Northern District of California, pursuant to 28 U.S.C. §1407.

Dated: January 21, 2008

Respectfully submitted,



Gary F. Lynch

PA I.D. 56887

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**Counsel for Plaintiff Melanie
Klingensmith**

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

In re Oilily FACTA Litigation MDL No. _____

**BRIEF IN SUPPORT OF MOTION TO CENTRALIZE FOR
COORDINATED OR CONSOLIDATED PRETRIAL
PROCEEDINGS PURSUANT TO 28 U.S.C. § 1407**

I. INTRODUCTION

By her motion, Melanie A. Klingensmith (“Movant”), plaintiff in the action *Klingensmith v. Oilily Retail USA d/b/a Oilily*, No. 2:07-04321 (E.D. Pa.) (the “Pennsylvania Action”), seeks the transfer of the Pennsylvania Action to the Northern District of California for centralization and pretrial coordination or consolidation with the action styled, *McCoy v. Oilily B.V.*, No. 3:07-04780 (N.D. Ca.) (the “California Action”), pursuant to 28 U.S.C. § 1407. Each of these two class action lawsuits involves the same defendant and each lawsuit is premised on allegations that defendant violated the Fair and Accurate Credit Transaction Act, 15 U.S.C. §1681 et seq. (“FACTA”) by printing more than the last five digits of the card number and/or the expiration date of receipts provided to credit card and debit card cardholders transacting business with

defendant. Both actions seek certification of a national class of consumers who received receipts that did not comply with FACTA's requirements. Given the similarities in the allegations in these lawsuits, these cases satisfy the statutory requirements for transfer and coordination. Each case "involve[s] one or more common questions of fact" and centralization of the cases will further "the convenience of the parties and witnesses and will promote the just and efficient conduct of such actions" by ensuring centralized oversight of pretrial fact development in what are likely to be highly complex actions. 28 U.S.C. §1407.

Movant respectfully proposes that the Panel transfer the Pennsylvania Action for MDL treatment to the United States District Court for the Northern District of California.

II. BACKGROUND

On or about September 17, 2007, Plaintiff Elizabeth McCoy commenced the California Action against Oilily B.V. ("Oilily") in the United States District Court for the Northern District of California - San Francisco Division - on behalf of a national class of debit and credit cardholders who transacted business with defendant and who received receipts from Oilily that violated FACTA. *See* Exhibit 1 (California Action Complaint and docket report). The California Action has been assigned to the Honorable Susan Illston. Oilily answered the Complaint on November 21, 2007. On or about January 15, 2008, the Court held an Initial Case Management Conference. At that conference, the case was continued until April 18, 2008 for Further Case Management Conference. In addition, the parties were ordered to conduct very limited discovery pending the Ninth Circuit's ruling on *Soualian v. International Coffee & Tea, LLC*.

On or about October 16, 2007, Plaintiff Melanie A. Klingensmith filed the Pennsylvania Action against Oilily Retail USA d/b/a Oilily ("Oilily") in the U.S. District Court for the Eastern District of Pennsylvania - Philadelphia Division - also, on behalf of a national class. *See* Exhibit 2 (Pennsylvania Action Complaint and docket report). The Pennsylvania Action has been assigned to the Honorable John P. Fullam. Discovery has not commenced in the Pennsylvania Action.

These cases are well suited for coordinated or consolidated pretrial proceedings under 28 U.S.C. §1407. As discussed below, they present similar allegations and require resolution of parallel issues, including whether defendants failed to comply with federal statutory law, whether defendant participated in and pursued a common course of conduct and unlawful scheme, the nature of injunctive and equitable relief to which the Class may be entitled under the facts, and whether class certification is appropriate.

III. ARGUMENT

A. These Action Are Appropriate For Transfer And Pretrial Coordination Under 28 U.S.C. §1407

Title 28, section 1407(a) of the United States Code provides, "When civil actions involving one or more common questions of fact are pending in different districts, such actions may be transferred to any district for coordinated or consolidated pretrial proceedings." 28 U.S.C. §1407(a). The Panel "shall" make such transfers when in furtherance of "the convenience of the parties and witnesses" and when transfer "will promote the just and efficient conduct of such actions." *Id.* As explained below, the Pennsylvania Action and the California Action meet

these criteria.

B. These Actions Involve One Or More Common Questions Of Fact

The Pennsylvania Action and California Action meet the first requirement of section 1407(a) in that they involve one or more common questions of fact. The Panel has held that common questions of fact exist where “two or more complaints assert comparable allegations against identical defendants based upon similar transactions and events.” *In re Air West, Inc. Sec. Litig.*, 384 F. Supp. 609, 611 (J.P.M.L. 1974).

Each of the complaints filed in the two actions asserts a claim that the defendant violated federal law by printing more than the last five digits of the card number and/or the expiration date of receipts provided to credit and debit cardholders transacting business with defendant. As such, the factual issues plainly overlap.

Moreover, the two actions seek certification of overlapping classes. The fact that multiple cases present conflicting class representation claims militates in favor of consolidating the cases for pretrial proceedings because “[t]ransfer will eliminate any possibility of inconsistent determinations of the class action questions involved in th[e] litigation.” *Id.* (citing *In re Plumbing Fixtures Cases*, 298 F.Supp. 484, 493 (J.P.M.L. 1968)).

Therefore, the Pennsylvania Action and the California Action should be centralized for coordination and consolidation due to the common questions of law and fact involved.

C. Coordination Or Consolidation Of These Actions Will Serve The Convenience Of Parties And Witnesses

Coordination or consolidation of these cases will also satisfy the second criterion under section 1407(a) by serving the “convenience of [the] parties and witnesses.” Without

coordination or consolidation, discovery will likely be duplicative and witnesses will be deposed in each of the actions. Coordination or consolidation would solve the problem by enabling a single judge to formulate a pretrial program that would coordinate discovery, minimize witness inconvenience, and reduce expenses. See *In re A.H. Robins Co., Inc. "Dalkon Shield" IUD Prods. Liab. Litig.*, 406 F. Supp. 540, 542 (J.P.M.L. 1975) (transfer "necessary in order to prevent duplication of discovery"); *In re Cuisinart Food Processor Antitrust Litig.*, 506 F.Supp. 651, 655 (J.P.M.L. 1981) (transfer would "effectuate a significant overall savings of cost and a minimum of inconvenience to all concerned with the pretrial activities").

D. Coordination Or Consolidation Of These Actions Will Promote Just And Efficient Conduct Of The Actions

Centralization or consolidation of the two pending cases will also promote the third criterion of section 1407(a) - the just and efficient conduct of the lawsuits - by preventing duplicative discovery and by facilitating consistent resolution of pretrial issues including class certification. See e.g. *In re Cross Florida Barge Canal Litig.*, 329 F. Supp. 543, 544 (J.P.M.L. 1971) (two actions consolidated in order to "eliminate the likelihood of repetitive discovery in [certain] areas, serving the convenience of the parties and witnesses and furthering the just and efficient conduct of the litigation").¹

These cases were filed in Federal Court around the same time and little, if any discovery has taken place in either case. Thus, the pretrial process can be efficiently coordinated from the start. Given the common allegations in the complaints, discovery will be duplicated absent

¹ See also *Cooper Tire & Rubber Co.*, 2001 WL 253115 at *1 (cases centralized to eliminate duplicative discovery, prevent inconsistent pretrial rulings, and conserve resources); *St. Jude Med.*, 2001 U.S. Dist. LEXIS 5226, at *3 (same); *Am. Online*, 2000 U.S. Dist. LEXIS 13262, at *3-*4 (same); *Gen. Motors Corp.*, 1999 U.S. Dist. LEXIS 5075, at *2 (same); *Chrysler Corp. Vehicle Paint Litig.*, 1998 U.S. Dist. LEXIS 15675, at *2 (same).

coordination or consolidation of the actions.

Moreover, the various pretrial disputes likely to arise in these two cases will likely be the same (e.g., issues concerning the sufficiency of the pleadings and issues concerning the nature and scope of discovery and questions regarding privilege). See *In re Multi-Piece Rim Prods. Liab. Litig.*, 464 F. Supp. 969, 974 (J.P.M.L. 1979) (consolidation was necessary to “eliminate the possibility of conflicting pretrial rulings concerning... common factual issues”); *In re First Nat’l Bank, Heavener, Okla. Sec. Litig.*, 451 F. Supp. 995, 997 (J.P.M.L. 1978) (transfer “necessary, even though only two actions are involved, in order to... eliminate the possibility of inconsistent pretrial rulings”). Consolidation or coordination will also ensure that the parties to these lawsuits are not subject to inconsistent pretrial rulings regarding class certification. The Panel has “consistently held that transfer of actions under §1407 is appropriate, if not necessary, where the possibility of inconsistent class determinations exists.” *In re Sugar Indus. Antitrust Litig.*, 395 F. Supp. 1271, 1273 (J.P.M.L. 1975). See also *America Online*, 2000 U.S. Dist. LEXIS 13262, at *3-*4 (centralization necessary “in order to... prevent inconsistent pretrial rulings... with respect to overlapping class certification issues”); *In re Temporomandibular Joint (TMJ) Implants Prods. Liab. Litig.*, 844 F. Supp. 1553, 1554 (J.P.M.L. 1994) (same).² Since the class allegations in these cases are very similar the arguments presented both for and against certification will presumably be the same. Thus, there will be a significant possibility of

² *In re Roadway Express, Inc. Employment Practices Litig.*, 384 F. Supp. 612, 613 (J.P.M.L. 1974) (“the existence of and the need to eliminate [the possibility of inconsistent class determinations] presents a highly persuasive reason favoring transfer under Section 1407”); *In re Multidistrict Private Civil Table Damage Litig. Including Plumbing Fixtures*, 298 F. Supp. 484, 493 (J.P.M.L. 1968) (transfer necessary to avoid “pretrial chaos in conflicting class action determinations”); *In re Hawaiian Hotel Room Rate Antitrust Litig.*, 438 F. Supp. 935, 936 (J.P.M.L. 1977) (“[s]ection 1407 centralization is especially important to insure consistent treatment of the class action issues”); *In re Mutual Fund Sales Anti-Trust Litig.*, 361 F. Supp. 638, 639-640 (J.P.M.L. 1973) (“we have frequently held that the possibility for conflicting class determinations under [Fed. R.Civ.P. 23] is an important factor favoring transfer of all actions to a single district”).

inconsistent rulings on class certification and other class action-related issues if these cases are not coordinated or consolidated, not to mention unnecessary duplication of effort by the parties and the courts. The potential for inconsistent class rulings amplifies the need to have a single judge oversee the class action issues. *See In re Cuisinart Food Processor*, 506 F. Supp. at 655.

Moreover, transfer here is appropriate, despite the fact that there are only two cases involved,³ because any later-filed duplicative lawsuits could expediently be included as “tag-along” cases. *See In re Gas Meter Antitrust Litig.*, 464 F. Supp. 391 (J.P.M.L. 1979) (major reason for the Panel’s transfer order was the salutary effect of providing a ready forum for the inclusion of expected newly filed actions). In fact, the likelihood that other “tag-along” actions will be filed is high due to the fact that the defendant did business in several other states across the United States.

Finally, the complexity of the pending actions warrants transfer. The pending cases present complex factual and legal issues such that transfer and consolidation are particularly desirable. *See C. Wright & A. Miller, FEDERAL PRACTICE & PROCEDURE* §3863 (“In particular large complex multidistrict class actions, it has been argued that it is especially important to order pretrial consolidation; this will enable a single judge to restrict ‘disjointed actions into what can be termed a ‘super class action’ [which] may be the only form in which the litigation can be handled by the judicial system.’”) (citation omitted). These two cases involve allegations against a defendant who conducts business in many different states. Moreover, the

³ *See In re Clark Oil and Refining Corp. Antitrust Litig.*, 364 F. Supp. 458, 459 (J.P.M.L. 1973) (transfer of one case to district of another case necessary even though only two cases involved due to complexity of factual issues and presence of competing requests for class designation in order to avoid duplication of discovery and eliminate the possibility of conflicting pretrial rulings); *In re First Nat’l Bank*, 451 F. Supp. at 997 (transfer under §1407 necessary “even though only two actions are involved”).

proposed classes in these two class actions involve potentially hundreds of thousands of individuals. Clearly, these cases involve complex factual and legal issues and the parties, witnesses, and judicial system will benefit from having them, and the impending tag-along actions, coordinated or consolidated to avoid duplicative discovery and motion practice. *See In re Cuisinart Food Processor*, 505 F. Supp. at 655 (holding that difficult issues surrounding class certification warrant transfer). Therefore, for the sake of judicial efficiency, it is important that these actions be centralized and that pretrial processes be coordinated or consolidated.

E. This Panel Should Transfer The Pennsylvania Action To The Northern District of California

Movant respectfully requests that the Panel transfer the Pennsylvania Action to the Northern District of California to be coordinated or consolidated with the California Action. MDL actions are commonly transferred to a forum where one or more cases is already pending. *Dalkon Shield*, 406 F. Supp. at 542. Thus, centralization in the Northern District of California is appropriate because the California Action is currently pending in that district before Judge Illston.

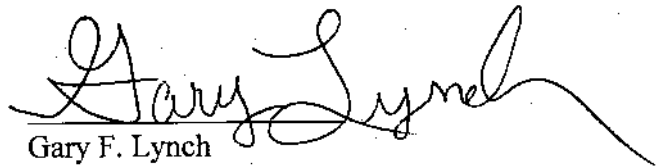
The location of the first-filed case is often found to be the appropriate transferee forum. *See In re Metoprolol Succinate Patent Litig.*, 329 F.Supp.2d 1368, 1370 (J.P.M.L. 2004)(noting that the case pending in the chosen transferee forum was the first-filed); *see also In re Mattel, Inc., Toy Lead Paint Products Liability Litigation*, --- F.Supp.2d ---, 2007 WL 4615776 (J.P.M.L. Dec. 18, 2007)(same); *In re Banc of America Inv. Services, Inc.*, 466 F.Supp.2d 1353, 1354 (J.P.M.L. 2006)(same). Thus, the Northern District of California is the more appropriate forum.

IV. Conclusion

For all the foregoing reasons, the coordination or consolidation of these overlapping class actions would further “the convenience of [the] parties and witnesses and [would] promote the just and efficient conduct of [the] actions.” 28 U.S.C. §1407(a). Therefore, Movant respectfully requests the Panel enter an order transferring the Pennsylvania Action to the Northern District of California for coordinated or consolidated pretrial proceedings.

Dated: January 21, 2008

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gary F. Lynch", with a long, sweeping horizontal line extending to the right.

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Exhibit 1

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Email: piercegore@gorelawfirm.com

(Additional counsel listed on signature page)

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ELIZABETH McCOY, individually and on
behalf of herself and all others similarly situated,

Plaintiff,

v.

OILILY B.V.; Does 1 through 10,

Defendants.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff, by and through her attorneys, brings this civil action for statutory damages and costs of suit, on behalf of herself and all others similarly situated. Upon personal knowledge as to her own acts and status, and upon information and belief as to all other matters, Plaintiff alleges the following:

NATURE OF THE ACTION

1. This is a class action against Oilily B.V. pursuant to the Fair and Accurate Credit Transactions Act, 15 U.S.C. §1681 *et seq.* ("FACTA"), which was enacted by Congress in 2003 to aid in the prevention of identity theft and credit/debit card fraud. Plaintiff, Elizabeth McCoy, individually and on behalf of all others similarly situated, brings this action against Oilily B.V. and Does 1-10 (collectively "Defendants") based on Defendants' practice of violating 15 U.S.C. §1681c(g), a provision of FACTA, which provides that "no person that accepts credit cards or debit cards for the transaction of business shall print more than the last five digits of the card

1 number or the expiration date upon any receipt provided to the cardholder at the point of the sale
2 or transaction.” (Emphasis added.) As used herein, the phrase “Prohibited Information” refers to
3 the information that 15 U.S.C. §1681c(g) prohibits from being printed on receipts - i.e., more than
4 the last five digits of the credit card or debit card number or the expiration date of the card.
5 Despite having had several years to bring themselves into compliance with the law, Defendants
6 have willfully and repeatedly violated §1681c(g) by printing Prohibited Information on credit card
7 and debit card receipts provided to thousands of consumers. Based on these violations,
8 Defendants are liable to Plaintiff and the proposed class of other similarly situated consumers,
9 pursuant to 15 U.S.C. §1681n.

10 THE PARTIES

11 2. Plaintiff is a resident of the State of California and the County of Santa
12 Clara, and is a “consumer” as defined by §1681a(c) of the Fair Credit Reporting Act (the
13 “FCRA”), as amended by FACTA. Pursuant to the Federal Rules of Civil Procedure, Plaintiff
14 seeks to represent a nationwide class of consumers, likewise defined by §1681a(c).

15 3. Defendant Oilily B.V. is a corporation organized under the laws of the
16 Netherlands, whose principal place of business is listed as P.O. Box 8077, NL-1802 KB Alkmaar,
17 Netherlands. Oilily B.V. manufactures and distributes apparel, accessories and personal care
18 products in more than 2000 retail stores in more than 40 countries. Oilily B.V. conducts business
19 in the State of California, in this district, and throughout the United States, and is a person that
20 accepts credit cards or debit cards for the transaction of business under the FCRA, pursuant to the
21 definition of a “person” set forth therein.

22 4. Plaintiff does not know the true names and capacities of Does 1-10,
23 inclusive, whether individual, corporate, association, or otherwise, and therefore, sues these
24 defendants, and each of them, by such fictitious names. Plaintiff will amend this Complaint to
25 show their true names and capacities when they have been ascertained. Plaintiff is informed and
26 believes, and on the basis of that belief alleges, that each of these Doe defendants was in some
27 manner legally responsible for the events, happenings, injuries, and damages alleged in this
28

1 Complaint. As used herein, the term Defendants or "Oilily" refers to Oilily B.V. and the Doe
2 defendants.

3 JURISDICTION AND VENUE

4 5. This Court has subject matter jurisdiction pursuant to 15 U.S.C. §1681p and
5 28 U.S.C. §1331.

6 6. This Court has personal jurisdiction over Oilily B.V. because a substantial
7 portion of the wrongdoing alleged in this Complaint took place in this state, Oilily B.V. is
8 authorized to do business here, Oilily B.V. has sufficient minimum contacts with this state, and/or
9 Oilily B.V. otherwise intentionally avails itself of the markets in this state through the promotion,
10 marketing and sale of its products in this state, to render the exercise of jurisdiction by this Court
11 permissible under traditional notions of fair play and substantial justice.

12 7. Venue is proper pursuant to 28 U.S.C. §1391(b) because the sole named
13 defendant conducts business throughout this district and because a substantial part of the events
14 and omissions giving rise to the claims occurred in this district, and because there is personal
15 jurisdiction in this district over the sole named defendant.

16 INTRADISTRICT ASSIGNMENT

17 8. Pursuant to the Northern District of California's Local Rules Nos. 3-2 and
18 3-5, Plaintiff requests assignment to the San Francisco Division of the Northern District of
19 California. A substantial part of the events or omissions that give rise to Plaintiff's claims
20 occurred in San Francisco County.

21 FACTUAL BACKGROUND

22 9. Section 1681c(g), by its express terms, became effective on December 4,
23 2004 with respect to "any cash register or other machine or device that electronically prints
24 receipts for credit card or debit card transactions" (collectively referred to herein as "Cash
25 Register" or "Cash Registers") that was "first put into use on or after January 1, 2005." (For
26 practical purposes, the statute became effective January 1, 2005 with respect to such Cash
27 Registers.) With respect to Cash Registers that were in use before January 1, 2005, the statute did
28 not become effective until December 4, 2006. Thus, Congress gave companies that were using

1 Cash Registers put into use before January 1, 2005 significant additional time to comply with
2 FACTA with respect to those Cash Registers. By contrast, with respect to Cash Registers first put
3 into use on or after January 1, 2005, Congress imposed liability immediately.

4 10. In addition, years ago, VISA, MasterCard, and other entities, including
5 Cash Register sellers, began informing retailers of the need to truncate credit and debit card
6 information to comply with various state laws, with VISA or MasterCard policies and/or
7 regulations, and/or with FACTA. Indeed, VISA implemented new operations regulations,
8 applicable to new Cash Registers, as early as July 2003, in response to legislation requiring
9 suppression of the expiration date and some digits on cardholder receipts, requiring similar
10 suppression of such information for VISA transactions. Defendants ignored all of these warnings,
11 as well as the requirements of FACTA itself, and continued to print Prohibited Information on
12 customer receipts. In contrast, most business and retail companies in the United States -
13 particularly large, sophisticated entities like Defendants - elected to take the steps needed to
14 replace, modify or re-program their Cash Registers in order to comply with the law.

15 **PLAINTIFF ELIZABETH MCCOY**

16 11. On or about August 1, 2007, Oilily printed the expiration date of Plaintiff's
17 credit card on a receipt provided to Plaintiff at the point of sale or transaction between Plaintiff
18 and Oilily, at Oilily's store in San Francisco. By doing so, Oilily violated 15 U.S.C. §1681c(g).

19 **CLASS ACTION ALLEGATIONS**

20 12. Plaintiff brings this action on behalf of herself and a class of persons
21 similarly situated (referred to herein as "Class Members"). This action is properly maintainable as
22 a class action pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(1) and 23(b)(3).

23 13. Since January 1, 2005, and within the applicable statute of limitations
24 period, Oilily printed the expiration date and/or printed more than the last five digits of Class
25 Members' credit card or debit card numbers on the receipts provided to the Class Members at the
26 point of a sale or transaction between Oilily and Class Members. To the extent Oilily did so using
27 Cash Registers that were first put in use on or after January 1, 2005, it violated 15 U.S.C.
28 §1681c(g).

1 14. On or after December 4, 2006, Oilily printed the expiration date and/or
2 printed more than the last five digits of Class Members' credit card or debit card numbers on the
3 receipts provided to the Class Members at the point of a sale or transaction between Oilily and the
4 Class Members. Each and every such receipt violated 15 U.S.C. §1681c(g), irrespective of when
5 the Cash Register was put into use.

6 15. Oilily's violations, as alleged herein, were not an accident or an isolated
7 oversight. Rather, Oilily knowingly and intentionally continued to use Cash Registers that were
8 not programmed to, or otherwise did not, comply with §1681c(g). Oilily knew that its receipt-
9 printing practice violated the rights of consumers under FACTA, or at a minimum, recklessly
10 disregarded whether its practice contravened consumers' rights and the law. Oilily ignored the
11 law, thereby placing Plaintiff and similarly situated customers at greater risk of identity theft.

12 16. Class Definition. Plaintiff seeks to represent a class of Oilily customers (the
13 "Class"), defined as follows:

14 All persons in the United States of America to whom Oilily
15 provided at the point of sale or transaction an electronically-printed
16 receipt on which Oilily printed more than the last five digits of the
17 number of the credit card or debit card used in the transaction, or on
18 which Oilily printed the expiration date of the credit or debit card
used in the transaction, during the time periods provided by 15
U.S.C. §1681c(g).

19 17. Excluded from the Class are: (1) Oilily and its subsidiaries, affiliates,
20 officers and directors; (2) any entity in which Oilily or any other excluded entity has a controlling
21 interest; (3) Oilily's legal representatives, predecessors, successors, assigns and employees; and
22 (4) the judge and staff to whom this case is assigned, and any member of the judge's immediate
family.

23 18. The members of the proposed Class (the "Class Members") can be
24 ascertained from Oilily's records or from information readily accessible to Oilily. Notice can be
25 sent to the Class Members by mail, email, the Internet, through publication in newspapers and
26 periodicals, or by other means authorized by the Court.

27 19. This action is brought and may be maintained as a class action under Rule
28 23 of the Federal Rules of Civil Procedure.

1 20. Numerosity Under Rule 23(a)(1). The Class Members are so numerous that
2 joinder of all of them is impracticable. Plaintiff believes and thereon alleges that the size of the
3 Class exceeds 1,000 persons.

4 21. Commonality Under Rule 23(a)(2). This action involves common questions
5 of law and fact, including, but not limited to, the following:

6 a. Whether Defendants printed Prohibited Information on credit card
7 or debit card receipts in violation of FACTA;

8 b. Whether Defendants' conduct constituted willful noncompliance
9 with FACTA;

10 c. Whether Class Members are entitled to recover statutory damages,
11 punitive damages or attorney's fees.

12 22. Typicality Under Rule 23(a)(3). Plaintiff's claims are typical of (and not
13 antagonistic to) the claims of the Class Members. Plaintiff and the other Class Members were
14 subjected to the same kind of unlawful conduct and the claims of Plaintiff and the other Class
15 Members are based on the same legal theories.

16 23. Adequacy of Representation Under Rule 23(a)(4). Plaintiff, individually
17 and through counsel, will fairly and adequately protect the interests of the Class, and Plaintiff has
18 no interest adverse to the interests of the Class. Plaintiff's attorneys are experienced class action
19 attorneys, will fully and adequately represent and protect the Class, and are ready, willing and able
20 to do so.

21 24. The Class Can Be Properly Maintained Under Rules 23(b)(1) and (c). The
22 unlawful practices of Defendants alleged herein constitute a course of conduct common to Class
23 Members. Prosecution of separate actions by individual Class Members would create a risk of
24 inconsistent or varying adjudications, which would establish incompatible standards of conduct
25 for Defendants and/or substantially impair or impede the ability of individual Class Members to
26 protect their interests.

27 25. The Class Can Be Properly Maintained Under Rules 23(b)(3) and (c).
28 Questions of law common to the members of the Class predominate over any questions affecting

1 only individual members with respect to some or all issues presented in this Complaint. A class
2 action is superior to other available methods for the fair and efficient adjudication of this
3 controversy. Individual litigation of the claims of all Class Members is impracticable because the
4 cost of litigation would be prohibitively expensive for each Class Member, and would impose an
5 immense burden upon the courts. Individualized litigation would also present the potential for
6 varying, inconsistent or contradictory judgments and would increase the delay and expense to all
7 parties and to the court system resulting from multiple trials of the same complex factual issues.
8 By contrast, the conduct of this action as a class action, with respect to some or all of the issues
9 presented in this Complaint, presents fewer management difficulties, conserves the resources of
10 the parties and of the court system, and is the only means to protect the rights of all Class
11 Members.

12 **CLAIM FOR RELIEF**

13 **(Against All Defendants For Willful Noncompliance with 15 U.S.C. §1681 et seq.)**

14 26. Plaintiff, on behalf of herself and the Class, realleges and incorporates, as if
15 fully alleged herein, each of the allegations contained in the preceding paragraphs of this
16 Complaint, and further alleges as follows:

17 27. During the relevant time period, as alleged above, Oilily intentionally,
18 repeatedly and systematically printed statutorily Prohibited Information (i.e., the expiration date of
19 a consumer's credit card or debit card and/or more than the last five digits of a consumer's credit
20 card or debit card number) on receipts it provided at the point of a sale or transaction to
21 consumers, including Plaintiff and Class Members, in violation of 15 U.S.C. §1681c(g).

22 28. Plaintiff believes and thereon alleges that Oilily's conduct was pursuant to
23 Oilily's policies, routine practices, procedures and customs for electronically printing receipts, at
24 least with respect to certain stores and/or Cash Registers which inexcusably failed to comply with
25 the law. Defendant knew or recklessly disregarded that its use of Cash Registers that did not
26 comply with the law, and that its printing of Prohibited Information on customers' receipts, was in
27 contravention of Plaintiff's and Class Members' rights. As such, Defendant's violations of the
28

1 FCRA and FACTA, as alleged by Plaintiff on behalf of herself and Class Members, were "willful"
2 for purposes of the FCRA and FACTA.

3 29. As a result of Defendant's willful violation of §1681c(g), Plaintiff and each
4 of the Class Members are entitled to monetary relief under 15 U.S.C. §1681n of not less than \$100
5 and not more than \$1,000 for each violation by Defendant.

6 30. Plaintiff and Class Members also were exposed to at least an increased risk
7 of identity theft by reason of Defendant's conduct. However, Plaintiff does not seek to quantify or
8 recover actual damages in this case, either for herself or the Class Members. That actual loss is
9 small and hard to quantify is why statutes such as the Fair Credit Reporting Act provide for
10 modest statutory damages without proof of injury. Any Class Members who suffered substantial
11 actual damages due to identity theft or other damages resulting from the violations alleged above
12 will be entitled to opt out of this action, should they so desire, and litigate their claims
13 independently.

14 **PRAYER FOR RELIEF**

15 Plaintiff, on behalf of herself and the Class, requests that the Court order the following
16 relief and enter judgment against Oilily B.V. as follows:

17 A. An order certifying the proposed members of the Class and appointing
18 Plaintiff and her counsel of record to represent the Class;

19 B. A judgment awarding Plaintiff and members of the Class statutory damages
20 under 15 U.S.C. §1681n for each willful violation as alleged herein;

21 C. A judgment awarding Plaintiff and members of the Class punitive damages
22 under 15 U.S.C. §1681n;

23 D. Pre-judgment and post-judgment interest as permitted by law;

24 E. Attorneys' fees, expenses and the costs of this action;

25 F. All other and further relief as the Court deems necessary, just and proper.
26
27
28

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff demands a trial by jury for all issues so triable under the law.

Dated: September __, 2007

Respectfully submitted,

Pierce Gore (State Bar No. 128515)
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By: _____
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ADRMOP, E-Filing

**U.S. District Court
California Northern District (San Francisco)
CIVIL DOCKET FOR CASE #: 3:07-cv-04780-SI**

McCoy v. Oilily B.V.
Assigned to: Hon. Susan Illston
Cause: 15:1681 Fair Credit Reporting Act

Date Filed: 09/17/2007
Jury Demand: Both
Nature of Suit: 480 Consumer Credit
Jurisdiction: Federal Question

Plaintiff

Elizabeth McCoy
*individually and on behalf of herself and
all others similarly situated*

represented by **Ben F Pierce Gore**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

Oilily B.V.

Defendant

**Olly's Retail USA, Inc. d/b/a Oilily -
Incorrectly sued as Oilily B.V.**

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Date Filed	#	Docket Text
09/17/2007	<u>1</u>	COMPLAINT (Summons issued); against Oilily B.V. (Filing fee \$ 350, receipt number 34611010584.). Filed by Elizabeth McCoy. (ys, COURT STAFF) (Filed on 9/17/2007) Additional attachment(s) added on 10/5/2007 (ys, COURT STAFF). (Entered: 09/18/2007)
09/17/2007	<u>2</u>	ADR SCHEDULING ORDER: Case Management Statement due by 12/28/2007. Case Management Conference set for 1/4/2008 02:00 PM. (Attachments: # <u>1</u> standing orders and cmc order)(ys, COURT STAFF) (Filed on 9/17/2007) (Entered: 09/18/2007)
09/17/2007		CASE DESIGNATED for Electronic Filing. (ys, COURT STAFF) (Filed on 9/17/2007) (Entered: 09/18/2007)
09/17/2007		Summons Issued as to Oilily B.V.. (ys, COURT STAFF) (Filed on 9/17/2007) (Entered: 09/18/2007)
10/03/2007	<u>3</u>	CLERK'S NOTICE re: Failure to E-File complaint by plaintiff's counsel. (ys, COURT STAFF) (Filed on 10/3/2007) (Entered: 10/03/2007)
11/13/2007	<u>4</u>	STIPULATION <i>for Extension of Time for Defendant's Response to Plaintiff's Complaint</i> by Olly's Retail USA, Inc. d/b/a Oilily - Incorrectly sued as Oilily B.V.. (Westheimer, Michael) (Filed on 11/13/2007) (Entered: 11/13/2007)
11/21/2007	<u>5</u>	DEFENDANT'S ANSWER to Complaint with DEMAND FOR JURY TRIAL by Olly's Retail USA, Inc. d/b/a Oilily - Incorrectly sued as Oilily B.V.. (Sheridan, Stephanie) (Filed on 11/21/2007) (Entered: 11/21/2007)
11/29/2007	<u>6</u>	CLERK'S NOTICE Case Management Conference set for 1/15/2008 02:30 PM. (ts, COURT STAFF) (Filed on 11/29/2007) (Entered: 11/29/2007)
11/29/2007		Set Deadlines/Hearings: Case Management Conference set for 1/15/2008 02:30 PM. (ys, COURT STAFF) (Filed on 11/29/2007) (Entered: 11/30/2007)
01/02/2008	<u>7</u>	JOINT CASE MANAGEMENT STATEMENT filed by Olly's Retail USA, Inc. d/b/a Oilily - Incorrectly sued as Oilily B.V.. (Sheridan, Stephanie) (Filed on 1/2/2008) (Entered: 01/02/2008)
01/08/2008	<u>8</u>	ADR Clerks Notice re: Non-Compliance with Court Order. (tjs, COURT STAFF) (Filed on 1/8/2008) (Entered: 01/08/2008)
01/16/2008	<u>9</u>	NOTICE of need for ADR Phone Conference (ADR L.R. 3-5 d) (Sheridan, Stephanie) (Filed on 1/16/2008) (Entered: 01/16/2008)
01/17/2008	<u>10</u>	Minute Entry: Initial Case Management Conference held on 1/15/2008 before Illston (Date Filed: 1/17/2008). Case continued to 4/18/08 @ 2:30 p.m. for Further Case Management Conference ORDERED AFTER HEARING: Defendant will produce its initial disclosures soon. The parties will conduct very limited discovery pending the 9th Circuits ruling on the Soulian case. The parties are also informally discussing settlement.() (ts, COURT STAFF) (Date Filed: 1/17/2008) (Entered: 01/17/2008)
01/17/2008		Set Deadlines/Hearings: Case Management Conference set for 4/18/2008 02:30 PM. (ys, COURT STAFF) (Filed on 1/17/2008) (Entered: 01/18/2008)

PACER Service Center			
Transaction Receipt			
01/21/2008 08:16:24			
PACER Login:	gl0398	Client Code:	
Description:	Docket Report	Search Criteria:	3:07-cv-04780-SI
Billable Pages:	2	Cost:	0.16

Exhibit 2

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MELANIE A. KLINGENSMITH,
individually and on behalf of all others
similarly situated.

Plaintiff,

v.

OILILY RETAIL USA d/b/a OILH.Y.,
and DOES 1 through 10, inclusive.

Defendants.

)
) Civil Action No.
)

) CLASS ACTION
)

) **JURY TRIAL DEMANDED**
)

) **Electronically Filed**
)
)
)
)

CLASS ACTION COMPLAINT

Comes now Melanie A. Klingensmith, ("Plaintiff") on behalf of herself and all others
similarly situated and alleges as follows:

INTRODUCTION

1. In 2003, Congress passed and the President signed, the Fair and Accurate Credit
Transaction Act ("FACTA") to assist in the prevention of identity theft and credit and debit card
fraud. In the statement provided by the President during the signing of the bill, the President
declared that:

This bill also confronts the problem of identity theft. A growing number of
Americans are victimized by criminals who assume their identities and cause
havoc in their financial affairs. With this legislation, the Federal Government is
protecting our citizens by taking the offensive against identity theft.

2. A main provision of FACTA (codified as 15 U.S.C. §1681e(g) of the Fair Credit
Reporting Act) provides that:

No person that accepts credit cards or debit cards for the transaction of business
shall print more than the last five digits of the card number or the expiration date
upon any receipt provided to the cardholder at the point of sale or transaction.

3. The law gave merchants who accept credit cards and/or debit cards up to three years to comply with its requirements, requiring full compliance with its provisions no later than December 4, 2006. Although Defendants (defined below) had up to three years to comply, Defendants have willfully violated this law and failed to protect Plaintiff and others similarly situated against identity theft and credit card and debit card fraud by continuing to print more than the last five digits of the card number and/or the expiration date on receipts provided to debit card and credit card cardholders transacting business with Defendants.

4. Plaintiff, on behalf of herself and all others similarly situated, brings this action against Defendants based on Defendants' violation of 15 U.S.C. §§1681 *et seq.*

5. Plaintiff seeks, on behalf of herself and the class, statutory damages, punitive damages, costs and attorneys fees, all of which are expressly made available by statute, 15 U.S.C. §§1681 *et seq.*

JURISDICTION AND VENUE

6. This Court has federal question jurisdiction pursuant to 28 U.S.C. §1331 and 15 U.S.C. §1681p.

7. Plaintiff's claims asserted herein arose in this judicial district and Defendants do business in this judicial district.

8. Venue in this judicial district is proper under 28 U.S.C. §1391(b) and (c) and 1400(a) in that this is the judicial district in which a substantial part of the acts and omissions giving rise to the claims occurred.

PARTIES

9. Plaintiff, Melanie A. Klingensmith, is and at all times relevant hereto was a resident of the Commonwealth of Pennsylvania, County of Lawrence.

10. Defendant Oilily Retail USA d/b/a Oilily is a company headquartered at 103 Forest Avenue, River Forest, Illinois 60305. "Defendant" means Oilily Retail USA d/b/a Oilily and defendants Does 1 through 10. Defendant is a "person that accepts credit cards or debit cards for the transaction of business" within the meaning of FACTA.

11. Plaintiff is unaware of the true names of defendants Does 1 through 10. Said defendants are sued by said fictitious names, and the pleadings will be amended as necessary to obtain relief against defendants Does 1 through 10 when the true names are ascertained, or as permitted by law or by the Court.

12. Plaintiff is informed and believes and thereon alleges that all relevant times each defendant was the franchisor, franchisee, principal, agent, partner, joint venturer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of some or all of the other defendants, and was engaged with some or all of the other defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other defendants so as to be liable for their conduct with respect to the matters alleged below. Plaintiff is informed and believes and thereon alleges that each defendant acted pursuant to and within the scope of the relationships alleged above, that each defendant knew or should have known about, and authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other defendants.

**INDUSTRY KNOWLEDGE REGARDING THE
TRUNCATION OF EXPIRATION DATES**

13. In early 2003, the payment card industry and Congress announced that they were working together to combat identity theft. A critical part of this joint effort was the truncation of personal data from credit and debit card receipts presented to consumers at the point of sale.

14. On March 6, 2003, Visa CEO Carl Pascarella held a joint press conference with

Senators Judd Gregg, Jon Corzine, Patrick Leahy and Dianne Feinstein to announce Visa USA's new account truncation program to protect consumers from identity theft. At the press conference, Mr. Pascarella stated:

"Today, I am proud to announce an additional measure to combat identity theft and protect consumers. Our new receipt truncation policy will soon limit cardholder information on receipts to the last four digits of their accounts. *The card's expiration date will be eliminated from receipts altogether*

"The first phase of this new policy goes into effect July 1, 2003 for all new terminals. I would like to add, however, that even before this policy goes into effect, many merchants have already voluntarily begun truncating receipts, thanks to the groundwork that we began together several years ago.

* * * *

"Visa USA is pleased to be working with Senator Feinstein, and the other senators here today in the fight to protect consumers from identity theft. After all, we share the same goals."

On July 9, 2003, L. Richard Fischer, presented a written statement to the United States House of Representatives Committee on Financial Services on behalf of Visa USA, Inc., supporting the truncation requirements of what ultimately became FACTA. Therein, Mr. Fischer stated:

"Although Visa generally believes that the details of preventing identity theft should be left to financial institutions that are best suited to address ever evolving fraud techniques, Title II could provide important benefits to consumers and financial institutions alike by establishing workable identity theft provisions and ensuring that these provisions benefit from national uniformity. For example, Section 203 of Title II would prohibit any merchant or other entity that accepts credit and debit cards from printing more than the last four digits of the card account number *or the expiration date* upon receipts provided to cardholders at the point of sale"

15. Visa USA's agreements with the American merchants which accept Visa brand credit or debit cards are defined in part in a manual entitled Rules for Visa Merchants, Card Acceptance and Chargeback Management Guidelines ("Visa Merchant Rules"). The Visa

Merchant Rules Manual includes a description of Visa's truncation requirements. For example, the 2006 edition of the Manual states:

"Visa requires that all new electronic POS terminals provide account number truncation on transaction receipts. This means that only the last four digits of an account number should be printed on the customer's copy of the receipt.

After July 1, 2006, *the expiration date should not appear at all*. Existing POS terminals must comply with these requirements by July 1, 2006"

16. The truncation standards set forth in the Visa Merchant Rules, which are part of the contract between Visa and the merchants which accept its debit and/or credit cards, served as the basis for what ultimately became the truncation requirements of FACTA.

17. The Office of Thrift Supervision, United States Department of Treasury ("OTS"), is responsible, *inter alia*, for monitoring financial institution compliance with FACTA. Toward this end, the OTS publishes an Examination Handbook ("Handbook") which assists OTS field personnel when they perform an examination, or compliance audit, of a given financial institution. The February 2006 Edition of the Handbook states, in relevant part:

Truncation of Credit and Debit Card Account Numbers

Ensure that electronically generated receipts from ATM and POS terminals or other machines do not contain more than the last five digits of the card number *and do not contain the expiration dates*.

18. FACTA's requirement that merchants truncate credit and debit card expiration dates was phased in over a three year period. During the three year phase-in period, there was extensive publicity regarding the law's requirements.

19. Many restaurant and retail trade associations apprised their merchant members that FACTA requires truncation of the entire expiration date and all but the last five digits of the cardholder account number.

20. In May, 2007 the Federal Trade Commission issued a business alert entitled "Slip Showing? Federal Law Requires All Businesses to Truncate Credit Card Information on Receipts." That alert stated in relevant part:

"According to the federal Fair and Accurate Credit Transaction Act (FACTA), the electronically printed credit and debit card receipts you give your customers must shorten - or truncate - the account information. You may include no more than the last five digits of the card number, and you must delete the card's expiration date."

DEFENDANTS' KNOWLEDGE OF FACTA'S TRUNCATION REQUIREMENTS

21. Defendant had actual knowledge of Visa's truncation requirements, specifically including the requirement that credit and debit card expiration dates be truncated on receipts presented to consumers at the point of sale. Defendant had a contractual obligation to adhere to these truncation requirements.

22. Defendant had actual knowledge of FACTA's truncation requirements, specifically including the requirement that credit and debit card expiration dates be truncated on receipts presented to consumers at the point of sale and was provided with notice of these obligations by trade associations and others.

THE IMPORTANCE OF TRUNCATING EXPIRATION DATES

23. Truncation standards, including the standards reflected in the Visa Merchant Rules and in FACTA, permit the publication of the last four or five digits of customer account numbers on the receipt presented to customers at the point of sale. The publication of this minimal amount of account information is necessary to facilitate merchant account reconciliation, processing of returns, etc. In isolation, the publication of *only* the last four or five digits of a customer account number significantly limits the extent to which a potential identity

thief can effectively use customer receipts disseminated at the point of sale to facilitate identity theft.

24. However, the publication of expiration dates on customer receipts disseminated at the point of sale, *in addition to* the last four or five digits of the customer account number, exponentially increases the possibility of identity theft, which is the obvious reason that Visa, and then Congress, requires the truncation of expiration dates.

25. Contrary to popular perception, credit and debit card account numbers are not randomly generated. Instead, account numbers reflect an internal coding scheme set forth by the International Organization for Standardization ("ISO") 7812, which defines the content in the cards' magnetic strips. Consistent with this standard, every credit card number consists of the following: (a) a single digit Major Industry Identifier ("MII"); (b) an issuer identification number ("IIN"); (c) an account number; and, (d) a check digit.

26. The MII identifies the industry of the issuer of the card.

27. The IIN consists of the first six digits of the card number and identifies the specific issuer of the card.

28. The account number consists of the seventh through next to last digit, and must be a maximum of 12 digits.

29. The last digit is a "check digit" that is not randomly assigned, but instead is calculated by a defined algorithm. Therefore, the "check digit" is derivative of the other numbers in the credit card number.

30. Astute identity thieves are familiar with this coding paradigm and can use sophisticated mathematical modeling to decipher account numbers.

31. To the extent that an identity thief is able to decipher a credit or debit card user's

account number, the importance of truncating expiration dates becomes manifest. That is, unlike the account number on the credit or debit card, the expiration date cannot be deciphered through sophisticated mathematical modeling. Therefore, the expiration date is an important security check that corroborates that a person attempting to use a given account number is actually the authorized user of the card.

32. The expiration dates are also used to confirm that a person making a purchase over the phone or on the internet actually has the card in their possession.

33. Banks and credit card associations (i.e. Visa, MasterCard, American Express, etc.) are keenly aware of the importance of truncating expiration dates.

34. In addition, a would be identity thief who steals a receipt containing the last four or five digits of a credit card account number *and* an expiration date can use that data in an attempt to dupe the cardholder, or other potential information sources, into disclosing additional confidential financial information relating to the cardholder. The more information that is disclosed on the receipt, the easier it is to pilfer additional confidential financial information.

35. The costs of truncating credit and/or expiration dates and account numbers is *de minimis*.

CLASS ALLEGATIONS

36. Plaintiff brings this class action on behalf of herself and all others similarly situated pursuant to Rules 23(a) and 23(b) of the Federal Rules of Civil Procedure.

37. Plaintiff seeks to represent a class persons to be defined as follows:

With respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that was in use prior to January 1, 2005: all persons to whom Defendants provided an

electronically printed receipt at the point of sale or transaction, in a transaction occurring after December 4, 2006, on which Defendants printed 1) more than the last five digits of the person credit card or debit card number, and/or, 2) the expiration date of the person's credit card number; and/or

With respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that was first put into use on or after January 1, 2005: all persons to whom Defendants provided an electronically printed receipt at the point of sale or transaction, in a transaction occurring after such machine was put into use, on which Defendants printed 1) more than the last five digits of the person credit card or debit card number, and/or, 2) the expiration date of the person's credit card number.

38. Numerosity: The class described above is so numerous that joinder of all individual members in one action would be impracticable. The disposition of the individual claims of the respective class members through this class action will benefit both the parties and this Court.

39. Plaintiff is informed and believes, and thereon alleges, that there are at minimum, thousands of members of the class described above.

40. The exact size of the class and the identities of the individual members thereof are ascertainable through Defendants' records, including but not limited to Defendants' sales and transaction records.

41. Members of the class may be notified of the pendency of this action by techniques and forms commonly used in class actions, such as by published notice, e-mail notice, website

notices, first class mail, or combinations thereof, or by other methods suitable to this class and deemed necessary and/or appropriate by this Court.

42. Typicality: Plaintiff's claims are typical of the claims of the members of the class. The claims of the Plaintiff and members of the class are based on the same legal theories and arise from the same unlawful and willful conduct.

43. Plaintiff and members of the class were each customers of Defendants, each having made a purchase or transacted other business with Defendants at an applicable time using a credit card and/or debit card. At the point of such sale or transaction with Plaintiff and members of the class, Defendants provided to Plaintiff and each member of the class a receipt in violation of 15 U.S.C. §1681c(g).

44. Common Questions of Fact and Law: There is a well-defined community of interest and common questions of fact and law affecting members of the class.

45. The questions of fact and law common to the class predominate over questions which may affect individual members and include the following:

- a. Whether Defendants' conduct of providing Plaintiff and the members of the class with a sales or transaction receipt whereon Defendants printed more than the last five digits of the credit card or debit card and/or the expiration date of the credit card or debit card violated the FACTA, 15 U.S.C. §§1681 et seq.;
- b. Whether Defendants' conduct was willful;
- c. Whether Plaintiff and members of the class are entitled to statutory damages, punitive damages, costs and/or attorneys' fees for Defendants' acts and conduct;

46. Adequacy of Representation: Plaintiff is an adequate representative of the class because her interests do not conflict with the interests of the members of the class. Plaintiff will fairly, adequately, and vigorously represent and protect the interests of the members of the class and has no interests antagonistic to the members of the class. Plaintiff has retained counsel who are competent and experienced in the prosecution of class action litigation.

47. Superiority: A class action is superior to other available means for the fair and efficient adjudication of the claims of the class. While the aggregate damages which may be awarded to the members of the class are likely to be substantial, the damages suffered by the individual members of the class are relatively small. As a result, the expense and burden of individual litigation makes it economically infeasible and procedurally impracticable for each member of the class to individually seek redress for the wrongs done to them. Plaintiff does not know of any other litigation concerning this controversy already commenced by or against any member of the class. The likelihood of the individual members of the class prosecuting separate claims is remote. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments, and would increase the delay and expense to all parties and the court system resulting from multiple trials of the same factual issues. In contrast, the conduct of this matter as a class action presents fewer management difficulties, conserves the resources of the parties and the court system, and would protect the rights of each member of the class. Plaintiff knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action.

48. Disavowal of Unconstitutional Damages. To the extent that any award of class-based statutory damages against Defendants might be adjudicated as violating Defendants' Due Process Rights under the United States Constitution, Plaintiff, on behalf of the putative class she

is seeking to represent. expressly requests damages only to the fullest extent allowed under the Constitution of the United States.

FIRST CAUSE OF ACTION

For Violation of 15 U.S.C. §§1681 *et seq.*

(On Behalf of Plaintiff and the Members of the Class)

49. Plaintiff hereby incorporates by reference the allegations contained in the above paragraphs of this Complaint as if fully set forth herein.

50. Plaintiff asserts this claim on behalf of herself and the class against Defendants.

51. Title 15 U.S.C. §1681c(g)(1) provides that:

...no person that accepts credit cards or debit cards for the transaction of business shall print more than the last five digits of the card number or the expiration date upon any receipt provided to the cardholder at the point of sale of transaction.

52. With respect to machines that were first put into use after January 1, 2005, 15 U.S.C. §1681c(g)(3)(B) required immediate compliance with the provisions of 15 U.S.C. §1681c(g)(1).

53. With respect to machines that were in use before January 1, 2005, 15 U.S.C. §1681c(g)(3)(B) required compliance with the provisions of 15 U.S.C. §1681c(g)(1) on or after December 4, 2006.

54. Defendants transact business in the United States and accept credit cards and/or debit cards in the course of transacting business with persons such as Plaintiff and the members of the class. In transacting such business, Defendants use cash registers and/or other machines or devices that electronically print receipts for credit card and/or debit card transactions.

55. On September 1, 2007, after the effective date of the statute, Defendant, at its

location at 160 North Gulph Road, King of Prussia, Pennsylvania 19406, provided Plaintiff with an electronically printed receipt on which Defendant printed the expiration date of Plaintiff's credit or debit card.

56. Defendants, at the point of a sale or transaction with members of the class, provided, either: a) through use of a machine that was first put into use on or after January 1, 2005, at any time after such date; or b) through any machine at any time after December 4, 2006, each member of the class with one or more electronically printed receipts on each of which Defendants printed, for each respective class member, more than the last five digits of such member's credit card or debit card number and/or printed the expiration date of such member's credit or debit card.

57. As set forth above, FACTA was enacted in 2003 and gave merchants who accept credit card and/or debit cards up to three years to comply with its requirements, requiring compliance for all machines no later than December 4, 2006.

58. Defendants knew of, or should have known of, and were informed about the law, including specifically FACTA's requirements concerning the truncation of credit and debit card numbers and prohibition on printing of expiration dates.

59. Despite knowing and being repeatedly informed about FACTA and the importance of truncating credit card and debit card numbers and preventing the printing of expiration dates on receipts, and despite having had up to more than three years to comply with FACTA's requirements, Defendants willfully violated and continue to violate FACTA's requirements by, *inter alia*, printing more than five digits of the card number and/or the expiration date upon the receipts provided to members of the class - persons with whom Defendants transact business.

60. Most of Defendants' business peers and competitors readily brought their credit card and debit card receipt printing process into compliance with FACTA by, for example, programming their card machines and devices to prevent them from printing more than the last five digits of the card number and/or the expiration date upon the receipts provided to the cardholders. Defendants could have readily done the same.

61. In contrast, Defendants willfully disregarded FACTA's requirements and continue to use cash registers or other machines or devices that print receipts in violation of FACTA.

62. Defendants willfully violated FACTA in conscious disregard of the rights of Plaintiff and the members of the class thereby exposing Plaintiff and the members of the class to an increased risk of identity theft and credit and/or debit card fraud.

63. As a result of Defendants' willful violations of FACTA, Defendants are liable to Plaintiff and each member of the class in the statutory damage amount of "not less than \$100 and not more than \$1000" for each violation. 15 U.S.C. §1681n(a)(1)(A).

64. As a result of Defendants' willful violations of FACTA, Plaintiff and the members of the class are entitled to recover costs of suit and their reasonable attorneys' fees. 15 U.S.C. §1681n(a)(3).

65. As a result of Defendants' willful violations of FACTA, Plaintiff and the members of the class are entitled to recover punitive damages. 15 U.S.C. §1681n(a)(2).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and the members of the class, prays for:

- a. An order certifying the class and appointing Plaintiff as the representative of the class, and appointing counsel for Plaintiff as counsel for the class;

- b. An award to Plaintiff and the members of the class of statutory damages pursuant to 15 U.S.C. §1681n(a)(1)(A) for Defendants' willful violations (up to but not exceeding the fullest extent allowed under the Constitution of the United States);
- c. An award to Plaintiff and the members of the class of punitive damages pursuant to 15 U.S.C. §1681n(a)(2)(up to but not exceeding the fullest extent allowed under the Constitution of the United States);
- d. Payment of costs of suit herein incurred pursuant to, *inter alia*, 15 U.S.C. §1681n(a)(3);
- e. Payment of reasonable attorneys' fees pursuant to, *inter alia*, 15 U.S.C. §1681n(a)(3);
- f. For other and further relief as the Court may deem proper.

Dated: October 15, 2007

Respectfully Submitted,



Gary F. Lynch
PA56887
glvnc@carlsonlynch.com
CARLSON-LYNCH LTD.
PO Box 7635
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(724) 656-1555
(724) 656-1556(f)

SPECIAL

**United States District Court
Eastern District of Pennsylvania (Philadelphia)
CIVIL DOCKET FOR CASE #: 2:07-cv-04321-JF**

KLINGENSMITH v. OILILY RETAIL USA et al
Assigned to: HONORABLE JOHN P. FULLAM
Cause: 15:1681 Fair Credit Reporting Act

Date Filed: 10/16/2007
Jury Demand: Plaintiff
Nature of Suit: 480 Consumer Credit
Jurisdiction: Federal Question

Plaintiff

MELANIE A. KLINGENSMITH
*INDIVIDUALLY AND ON BEHALF OF
ALL OTHERS SIMILARLY SITUATED*

represented by **GARY F. LYNCH**
CARLSON LYNCH LTD
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Email: glynch@carlsonlynch.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

OILILY RETAIL USA
doing business as
OILILY

Defendant

DOES
1 THROUGH 10, INCLUSIVE

Date Filed	#	Docket Text
10/16/2007	1	COMPLAINT against OILILY RETAIL USA, DOES (Filing fee \$ 350 receipt number 942979.), filed by MELANIE A. KLINGENSMITH. (Attachments: # 1 Civil Cover Sheet # 2 Designation Form# 3 Case Management Track)(ti,) (Entered: 10/17/2007)
10/16/2007		Summons Issued as to OILILY RETAIL USA. One Original Forwarded To: Counsel on 10/17/07 (ti,) (Entered: 10/17/2007)
10/16/2007		DEMAND for Trial by Jury by MELANIE A. KLINGENSMITH. (ti,) (Entered: 10/17/2007)

PACER Service Center			
Transaction Receipt			
01/21/2008 11:18:46			
PACER Login:	gl0398	Client Code:	
Description:	Docket Report	Search Criteria:	2:07-cv-04321-JF
Billable Pages:	1	Cost:	0.08

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

In re Oilily FACTA Litigation MDL No. _____

SCHEDULE OF ACTIONS

<u>CASE CAPTION</u>	<u>COURT</u>	<u>CIVIL ACTION NO.</u>	<u>JUDGE</u>
Elizabeth McCoy v. Oilily B.V.	N.D. California (San Francisco)	3:07-cv-04780	Susan Illston
Melanie A. Klingensmith v. Oilily Retail USA d/b/a Oilily	E.D. Pennsylvania (Philadelphia)	2:07-cv-04321	John P. Fullman

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

In re Oilily FACTA Litigation MDL No. _____

PROOF OF SERVICE

I hereby certify that an original, 4 paper copies, and an electronic copy of the foregoing Motion, Brief, Schedule of Actions and this Certificate of Service was served by Overnight Mail on January 22, 2008, to the following:

Clerk of the Panel
Judicial Panel on Multidistrict Litigation
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E.
Room G-255, North Lobby
Washington, DC 20002-8004

I hereby certify that a copy of the foregoing Motion, Brief, Schedule of Actions and this Certificate of Service was served by First Class Mail on January 22, 2008, to the following:

Office of the Clerk of Court
United States District Court for the Northern District of California
San Francisco Division
450 Golden Gate Avenue
San Francisco, CA 94102

Office of the Clerk of Court
United States District Court for the Eastern District of Pennsylvania
Philadelphia Division

601 Market Street
Room 2609
Philadelphia, PA 19106-1797

Pierce Gore
Gore Law Firm
900 East Hamilton Avenue
Suite 100
Campbell, CA 95008
Counsel for Plaintiff Elizabeth McCoy, N.D. California, No. 3:07-cv-04780

J. Brandon McWherter
Charles L. Holliday
Clinton H. Scott
Spragins Barnett & Cobb, PLC
312 E. Lafayette Street
P.O. Box 2004
Jackson, TN 38302
Counsel for Plaintiff Elizabeth McCoy, N.D. California, No. 3:07-cv-04780

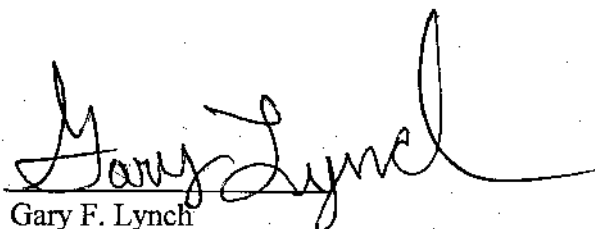
Justin S. Gilbert
Gilbert & Russell, PC
2021 Greystone Drive
Jackson, TN 38305
Counsel for Plaintiff Elizabeth McCoy, N.D. California, No. 3:07-cv-04780

Don Barrett
David McMullan
Don Barret, P.A.
404 Court Square North
P.O. Box 987
Lexington, MS 39095
Counsel for Plaintiff Elizabeth McCoy, N.D. California, No. 3:07-cv-04780

Charles Barrett
Barrett & Associates, P.A.
6518 Highway 100
Suite 210
Nashville, TN 37205
Counsel for Plaintiff Elizabeth McCoy, N.D. California, No. 3:07-cv-04780

Oilily Retail USA
103 Forest Avenue
River Forest, IL 60305
Defendant, E.D. Pennsylvania, No. 2:07-cv-04321

Stephanie Anne Sheridan
Michael Neil Westheimer
Sedgwick Detert Moran & Arnold LLP
One Market Plaza
Steuart Tower, 8th Floor
San Francisco, CA 94105
**Counsel for Defendant Olly's Retail USA, Inc. d/b/a Oilily (Incorrectly sued as Oilily B.V.),
N.D. California, No. 3:07-cv-04780**

A handwritten signature in black ink, appearing to read "Gary Lynch", written over a horizontal line.

Gary F. Lynch
PA I.D. 56887
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CARLSON LYNCH LTD
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(F) (724) 656-1556

Counsel for Plaintiff Melanie A. Klingensmith

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MELANIE A. KLINGENSMITH,)	
individually and on behalf of all others)	Civil Action No.2:07-cv-04321
similarly situated,)	
)	
Plaintiff,)	
)	Honorable John P. Fullam
v.)	
)	
OILILY RETAIL USA, d/b/a OILILY,)	
and DOES 1 through 10, inclusive,)	Electronically Filed
)	
Defendants.)	
)	

AFFIDAVIT OF SERVICE

I, Gary F. Lynch, hereby declare as follows:

On November 6, 2007, Defendant Oilily Retail USA, d/b/a Oilily was served by Process Server with the original summons and a copy of the complaint in the above captioned case at its corporate headquarters located at 103 Forest Avenue, River Forest, Illinois 60305, in accordance with Fed.R.Civ.P. 4(h)(1)(A). A copy of the executed Return of Service is attached hereto as Exhibit 1.

Respectfully submitted, this 13th day of February, 2008.

/s/ Gary F. Lynch_____

Gary F. Lynch, Esquire
PA ID 56887
glynch@carlsonlynch.com

CARLSON LYNCH LTD
36 N. Jefferson Street
PO Box 7635
New Castle, PA 16107
(P) 724-656-1555
(F) 724-656-1556

Exhibit 1

AO 440 (Rev. 10/93) Summons in a Civil Action

RETURN OF SERVICE		
Service of the Summons and complaint was made by me ⁽¹⁾	DATE	10/6/07
NAME OF SERVER (PRINT)	TITLE	Process Server
Jason E. Laning		
Check one box below to indicate appropriate method of service		
<input type="checkbox"/> Served personally upon the defendant. Place where served: _____		
<input type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left: _____		
<input type="checkbox"/> Returned unexecuted: _____		
<input checked="" type="checkbox"/> Other (specify): Corporate Server: I served Cilly Retail USA by serving Jamie Owen as Managing Buyer		
STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL
DECLARATION OF SERVER		
<p>I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.</p> <p> <input checked="" type="checkbox"/> Executed on 11/7/07 Date <input checked="" type="checkbox"/> Signature of Server </p> <p style="text-align: center; margin-top: 20px;"> <input checked="" type="checkbox"/> 1042 Maple Ave #150 Lisle IL 60532 Address of Server </p>		

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MELANIE A. KLINGENSMITH,
individually and on behalf of all others
similarly situated,

Plaintiff,

v.

OILILY RETAIL USA d/b/a/ OILILY and
DOES 1 through 10, inclusive,

Defendant.

Case No. 2:07-CV-04321-JF

Honorable John P. Fullam

**STIPULATION FOR EXTENSION OF TIME FOR
DEFENDANT'S RESPONSE TO PLAINTIFF'S COMPLAINT**

Pursuant to Eastern District of Pennsylvania Local Rule 7.4(b) and Judge Fullam's Standing Orders, Defendant OILILY RETAIL USA ("Defendant") and Plaintiff MELANIE A. KLINGENSMITH ("Plaintiff"), by and through their attorneys, hereby stipulate and agree to an extension of time for Defendant to respond to Plaintiff's Complaint. In this matter, Plaintiff's motion to centralize the action with a related case in the United States District Court for the Northern District of California is currently pending before the Multidistrict Litigation Panel, and is scheduled for hearing on March 27, 2008. Defendant and Plaintiff stipulate and agree that Defendant's responsive pleading will be due, presumably in the Northern District of California, on or before the sixtieth day following the date on which the Multidistrict Litigation Panel issues its ruling.

There have been no prior extensions of time.

IT IS SO AGREED AND STIPULATED.

DATED: February 14 2008.

CARLSON LYNCH LTD

By: /s/ (Authorized 02.14.08)

Gary F. Lynch
Attorneys for Plaintiff
MELANIE A. KLINGENSMITH

DATED: February 14 2008.

SEDGWICK, DETERT, MORAN & ARNOLD LLP

By _____/s/_____
Stephanie Sheridan
Alison Williams
Attorneys for Defendant
OILILY RETAIL USA

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MELANIE A. KLINGENSMITH,
individually and on behalf of all others
similarly situated,

Plaintiff,

v.

OILILY RETAIL USA d/b/a/ OILILY and
DOES 1 through 10, inclusive,

Defendant.

Case No. 2:07-CV-04321-JF

Honorable John P. Fullam

**STIPULATION FOR EXTENSION OF TIME FOR
DEFENDANT'S RESPONSE TO PLAINTIFF'S COMPLAINT**

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There have been no prior extensions of time.

IT IS SO AGREED AND STIPULATED.

DATED: February 14 2008.

CARLSON LYNCH LTD

By: /s/ (Authorized 02.14.08)

Gary F. Lynch

Attorneys for Plaintiff

MELANIE A. KLINGENSMITH


DATED: February 14 2008.

SEDGWICK, DETERT, MORAN & ARNOLD LLP

By _____ /s/
Stephanie Sheridan
Alison Williams
Attorneys for Defendant
OILILY RETAIL USA

APPROVED + SO ORDERED:

2/14/08



Fullam, SR. J.

2-19-08- FAXED BY
CHAMBERS TO:
G.F. LYNCH

A CERTIFIED TRUE COPY

ATTEST

By April Layne on Apr 10, 2008

FOR THE UNITED STATES
JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

UNITED STATES
JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

Apr 10, 2008

FILED
CLERK'S OFFICE

IN RE: OILILY FAIR AND ACCURATE CREDIT
TRANSACTIONS ACT (FACTA) LITIGATION

Elizabeth McCoy v. Oilily B.V., et al.,)
N.D. California, C.A. No. 3:07-4780)
Melanie A. Klingensmith v. Oilily Retail USA,)
E.D. Pennsylvania, C.A. No. 2:07-4321)

MDL No. 1939

FILED

APR 10 2008

TRANSFER ORDER

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Before the entire Panel*: Plaintiff in the Eastern District of Pennsylvania action has moved, pursuant to 28 U.S.C. § 1407, for coordinated or consolidated pretrial proceedings of this litigation in the Northern District of California. No other party to the litigation has responded to the motion.

This litigation currently consists of two actions pending in two districts, one action each in the Northern District of California and the Eastern District of Pennsylvania.

After considering all argument of counsel, we find that these actions involve common questions of fact, and that centralization under Section 1407 in the Northern District of California will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. Each action involves allegations that defendants' printing of certain credit and debit card information on customer receipts violated the Fair and Accurate Credit Transactions Act. Centralization under Section 1407 will eliminate duplicative discovery; prevent inconsistent pretrial rulings, especially with respect to class certification; and conserve the resources of the parties, their counsel and the judiciary.

We are persuaded that the Northern District of California is an appropriate transferee forum for this litigation, because the first-filed action is pending there and this choice is unopposed.

FILED

APR 15 2008

MICHAEL E. KUNZ, Clerk
By _____ Dep. Clerk

* Judge Scirica did not participate in the disposition of this matter.

I hereby certify that the annexed
document is a true and correct copy
of the original on file in my office.

TEST:

RICHARD W. WIEKING
U.S. District Court
Northern District of California

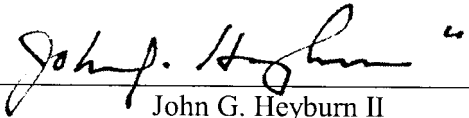
[Signature]
Deputy Clerk

4-10-08

-2-

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, the action pending in the Eastern District of Pennsylvania is transferred to the Northern District of California and, with the consent of that court, assigned to the Honorable Susan Yvonne Illston for coordinated or consolidated pretrial proceedings with the action pending there.

PANEL ON MULTIDISTRICT LITIGATION



John G. Heyburn II
Chairman

D. Lowell Jensen
Robert L. Miller, Jr.
David R. Hansen

J. Frederick Motz
Kathryn H. Vratil
Anthony J. Scirica*

CLOSED, SPECIAL

**United States District Court
Eastern District of Pennsylvania (Philadelphia)
CIVIL DOCKET FOR CASE #: 2:07-cv-04321-JF**

KLINGENSMITH v. OILILY RETAIL USA et al
Assigned to: HONORABLE JOHN P. FULLAM
Cause: 15:1681 Fair Credit Reporting Act

Date Filed: 10/16/2007
Date Terminated: 05/01/2008
Jury Demand: Plaintiff
Nature of Suit: 480 Consumer Credit
Jurisdiction: Federal Question

Plaintiff

MELANIE A. KLINGENSMITH
*INDIVIDUALLY AND ON BEHALF OF
ALL OTHERS SIMILARLY SITUATED*

represented by **GARY F. LYNCH**
CARLSON LYNCH LTD
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P.O. BOX 7635
NEW CASTLE, PA 16107
724-656-1555
Fax: 724-656-1556
Email: glynch@carlsonlynch.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

OILILY RETAIL USA
doing business as
OILILY

Defendant

DOES
1 THROUGH 10, INCLUSIVE

Date Filed	#	Docket Text
10/16/2007	<u>1</u>	COMPLAINT against OILILY RETAIL USA, DOES (Filing fee \$ 350 receipt number 942979.), filed by MELANIE A. KLINGENSMITH. (Attachments: # <u>1</u> Civil Cover Sheet # <u>2</u> Designation Form# <u>3</u> Case Management Track)(ti,) (Entered: 10/17/2007)
10/16/2007		Summons Issued as to OILILY RETAIL USA. One Original Forwarded To: Counsel on 10/17/07 (ti,) (Entered: 10/17/2007)

10/16/2007		DEMAND for Trial by Jury by MELANIE A. KLINGENSMITH. (ti,) (Entered: 10/17/2007)
01/29/2008	2	Copy Re: Documents (Motion to Centralize Pursuant to 28 U.S.C. 1407, Exhibits, Proof of Service) Filed Before the Judicial Panel on Multidistrict Litigation Regarding In Re: Oilily FACTA Litigation. (tjd) (Entered: 01/30/2008)
02/13/2008	3	AFFIDAVIT of Service upon Jamie Owen on behalf of DEFENDANT OILILY RETAIL USA by Personal Service on 11/6/07 (Attachments: # 1 Exhibit 1) (LYNCH, GARY) Modified on 2/19/2008 (nd). (Entered: 02/13/2008)
02/15/2008	4	Joint Stipulation for Extension of Time to File Answer filed by MELANIE A. KLINGENSMITH, OILILY RETAIL USA..(LYNCH, GARY) (FILED IN ERROR BY ATTORNEY; COPY FORWARDED TO CLERK/JUDGE FOR APPROVAL) Modified on 2/19/2008 (nd). (Entered: 02/15/2008)
02/19/2008	5	STIPULATION AND ORDER THAT THE TIME FOR THE DEFENDANT TO RESPOND TO THE COMPLAINT IS EXTENDED AS OUTLINED IN THIS ORDER. SIGNED BY HONORABLE JOHN P. FULLAM ON 2/19/08. 2/20/08 ENTERED AND COPIES E-MAILED AND FAXED.(stb,) (Entered: 02/20/2008)
04/15/2008	6	ORDER THAT PURSUANT TO 28 U.S.C. 1407, THE ACTION PENDING IN THE EASTERN DISTRICT OF PENNSYLVANIA IS TRANSFERRED TO THE NORTHERN DISTRICT OF CALIFORNIA AND, WITH THE CONSENT OF THAT COURT, ASSIGNED TO THE HONORABLE SUSAN YVONNE ILLSTON FOR COORDINATED OR CONSOLIDATED PRETRIAL PROCEEDINGS WITH THE ACTION PENDING THERE. (rf,) (Entered: 04/15/2008)
04/16/2008		Original record transferred to the Northern District of California via interdistrict transfer system. (MDL 1939) (le,) (Entered: 04/16/2008)

PACER Service Center			
Transaction Receipt			
05/23/2008 12:27:05			
PACER Login:	us4077	Client Code:	
Description:	Docket Report	Search Criteria:	2:07-cv-04321-JF
Billable Pages:	1	Cost:	0.08